Supreme Court, U.S.
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No. 96-1139

In The

Supreme Court of the United States

October Term, 1996

ROBERT LLOYD MORROW,

Petitioner,

and THE CHEROKEE NATION,

Plaintiff-Intervenor,

v.

THE HONORABLE DAVID WINSLOW, Judge of the District Court of Tulsa County, State of Oklahoma, JOHN AND JANE DOE prospective adoptive parents,

Respondents.

and

CAROL DERONE GRANT,

Respondent-Intervenor.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY TO RESPONSE FOR PETITION FOR WRIT OF CERTIORARI

I. THE FUNDAMENTAL ISSUE BEFORE THE COURT IS NOT AN INTERPRETATION OF OKLAHOMA LAW BUT A QUESTION OF FEDERAL ABSTENTION.

Respondents argue that the fundamental issue before the Court is a question of state law involving the "Indian family" exception to application of the Indian Child Welfare Act, 25 U.S.C. § 1901. That is not the question decided by the Tenth Circuit or brought to the Court. The issue presented for review is whether or not the federal courts should abstain from hearing allegations of violation of the Indian Child Welfare Act where there is a pending state court adoption. The Tenth Circuit did address in a footnote and rejected the "Indian family" exception created by the Oklahoma Supreme Court in *Matter of Adoption of Baby Boy D*, 742 P.2d 1059 (Okla. 1985). See footnote number 4, *Morrow v Winslow and John and Jane Doe*, 94 F.3d 1386, (10th Cir. 1996), Appendix A to Petition for Writ of Certiorari, page 18a. Therefore, contrary to the assertions of Respondents, the "Indian family" exception is not an issue before the Court.

II. PETITIONER IS NOT PRECLUDED FROM SEEKING REVIEW IN THIS COURT.

Respondents cite no authority for their bold proposition that Petitioner may not seek review of the instant Tenth Circuit decision regarding abstention. This proposition should be discarded summarily because the question decided by the Tenth Circuit regarding abstention in Indian Child Welfare Cases is one of legal precedence and

important public concern and policy especially in Indian country and with Indian children and parents.

III. ABSTENTION IS NOT PROPER IN INDIAN CHILD WELFARE CASES.

Respondents wholly fail to address the fundamental issue before the Court and the Tenth Circuit, i.e., did Congress intend for the federal courts to invoke the judicially created doctrine of abstention when it enacted 25 U.S.C. § 1914.

Respondent state court judge and adopting parents illustrate in their Response the belief and the actual practice in state court that state adoption law is paramount to federal law and the protections of the Indian Child Welfare Act are subordinate to state law. It is telling that Respondents failed to address the legislative interpretation and substantive arguments advanced by Petitioner.

Respondents argue that if the federal courts accept jurisdiction under 25 U.S.C. § 1914 then chaos could be created in the state courts. Congress understood the impact of the Indian Child Welfare Act on state courts when it enacted the act and especially when it provided in § 1914 a remedy for any court of competent jurisdiction to set aside child placements made in violation of the act. In fact, it is because states, pursuant to local law, placed other interests paramount to Indian and federal interests did Congress enact the Indian Child Welfare Act.

The Court should grant certiorari because abstention would severely limit timely enforcement of the Indian Child Welfare Act contrary to legislative intent.

IV. PETITIONER'S ATTORNEY IS NOT DISQUALIFIED FROM ENGAGING IN THE PRIVATE PRACTICE OF LAW

Respondents wholly failed to raise this issue before the Tenth Circuit and are precluded from asserting the issue before the Court. *Oklahoma Tax Commission v. Chickasaw Nation*, 115 S.Ct. 2214, 2219 (1995). Respondents fail to advise this Court that the Oklahoma Supreme Court has deferred this issue in a related appeal styled in the Matter of the Adoption of CMG, case number 88,553 until after the decisional stage of the appeal.

Further, under Oklahoma law, Respondents have waived any objection to Petitioner's attorney representation in this pro bono case by timely failing to object. See *Alexander v Smith*, 173 P.2d 648, (Okl. 1918); *Eden v Beaman*, (Okl. 1934), 30 P.2d 899, 900; *Pryor v State*, (Okl. 1934), 38 P.2d 923, 924; *Kane v Ferguson*, (Okl. 1945), 157 P.2d 195, 198.

CONCLUSION

An important issue of public concern and policy is before the Court and it should grant certiorari. Congress intended the enforcement of the federal Indian Child Welfare Act by allowing parties to seek relief by any court of competent jurisdiction pursuant to 25 U.S.C. § 1914. Without federal enforcement of the federal rights protected by the Indian Child Welfare, those rights are subordinated to a hostile tide of state law which was the reason for enactment in the first place.

The Court should grant certiorari.

Respectfully submitted,

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